

ORIGINAL

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FILED
 JUN 17 1999
 BY *Rn*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

JIMMIE DAVIS,

Petitioner,

v.

JOHN IGNACIO, et al.,

Respondents.

Case No. CV-N-99-137-ECR (PHA)

MOTION TO FILE LATE PLEADING

Respondents, through legal counsel FRANKIE SUE DEL PAPA, Attorney General of Nevada, by Rene L. Hulse, Deputy Attorney General, move this Court for permission to file Respondents' Motion to Dismiss Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. §2254 by a Person in State Custody after the filing date has expired. This Motion is based upon the accompanying affidavit of counsel.

DATED this 16th day of June, 1999.

FRANKIE SUE DEL PAPA
 Attorney General

By:

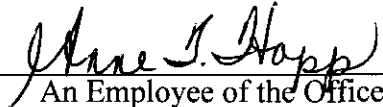
Rene L. Hulse
 RENE L. HULSE
 Deputy Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General of the State of Nevada and that on the 16th day of June, 1999, I served the foregoing MOTION TO FILE LATE PLEADING by mailing a copy thereof addressed to:

JIMMIE DAVIS, NDOP #27362
NEVADA STATE PRISON
P.O. BOX 607
CARSON CITY, NEVADA 89702



An Employee of the Office of the
Attorney General

AFFIDAVIT

STATE OF NEVADA)
) ss
 COUNTY OF CLARK)

I, RENE L. HULSE, being first duly sworn under oath, depose and state as follows:

1. I am an attorney licensed to practice law in the State of Nevada, and am qualified and admitted to practice before this court. I am employed as a Deputy Attorney General in the Office of the Attorney General of the State of Nevada and am assigned to the Special Prosecutions Unit of the Criminal Justice Division;

2. Pursuant to my duties as a deputy attorney general, I have been assigned to represent the Respondents in the matter entitled Jimmie Davis v. John Ignacio, et al., CV-N-99-137 ECR (PHA), and as such, I have personal knowledge of the matters contained herein;

3. Pursuant to this Court's Order entered on May 6, 1999, Respondents' answer or other responsive pleading to Petition for a Writ of Habeas Corpus was due to be filed on May 27, 1999, because DAVIS filed a Statement of No Additional Claims on or about May 7, 1999. Counsel would note that DAVIS filed his Statement of No Additional Claims only one day after this Court's scheduling order was entered and served. Respondents did not even receive the instant Petition until May 11, 1999;

4. On May 27, 1999, Respondents filed a Motion for Enlargement of Time (First Request) because documents comprising the state court record had not yet been received. Without such documents, counsel could not meet the requirements of Rule 5 of the Habeas Corpus Rules. Respondents' request for enlargement followed receipt of the instant Petition in the Attorney General's Office by only sixteen (16) days during which time: (1) it was reviewed for assignment; (2) it was routed for assignment to this deputy; (3) a file opened; (4) I reviewed the petition to determine the substantive content of the claims; (5) I reviewed the state district court clerk's file; and (6) I ordered documents comprising the state court record. Although Respondents timely prepared the Motion of Enlargement of Time, it was stricken from the record and returned to Respondents because the original Motion did not make its way into the Court's file. Respondents received that Order on or about June 7, 1999;

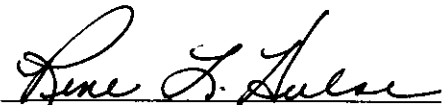
5. Respondents received the documents comprising DAVIS' state court record on or about June 8, 1999;

6. Although I had numerous other state and federal habeas matters to attend to, I immediately began reviewing DAVIS' state court record to prepare a response to the instant Petition;

7. Because I had a responsive brief due on June 1, 1999, in the capital habeas matter of Bajarano v. McDaniel, Case No CV-S-98-1016-PMP (RJJ), and another responsive brief due on June 10, 1999, in the matter of Arreola v. Crawford, Case No. CV-N-98-528-HDM (RAM). Both of those cases are complex matters that present numerous claims to the Court. I was not reasonably able to complete the response in the matter at hand earlier;

8. This Motion is brought in good faith and not for the purpose of delay. I have exercised due diligence both in seeking additional time to respond to DAVIS' Petition and in preparing a responsive brief to the instant Petition. I am seeking to file the document only three weeks after the original due date, and only nine (9) days after receiving the state court record. Counsel perceives no resulting prejudice to the Petitioner by the nine day delay.

9. Based upon the reasons stated above, I request that Respondents' Motion to Dismiss Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. §2254 by a Person in State Custody be filed after the due date has expired.


RENE L. HULSE

SUBSCRIBED AND SWORN to before me
this 16th day of June, 1999.


NOTARY PUBLIC in and for

